

8

Byron Lee Lynch, State Bar No. 074729  
1805 Hilltop Drive, Suite 202  
Redding, CA 96002  
Telephone [530] 224-1133

Attorney for Trustee

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA

In re:

MICHAEL METZGER,  
Debtor.

Case No. **06-21732-C-7**

MC#: BLL-2  
Date: Jan. 9, 2007  
Time: 9:00 a.m.  
Dept: C  
Ct Rm. 35

TRIPARTITE SETTLEMENT AGREEMENT

1. This Tripartite Settlement Agreement Authorizing (Agreement) is entered into between the debtor, Michael Metzger, (Debtor), the Debtor's non filing spouse Linda Metzger, (Linda), and John Reger, in his capacity as Trustee of this bankruptcy case (Reger). This Agreement is subject to the approval of the bankruptcy court.

**Preliminary recitals:**

2. Debtor, and Linda have been married for 17 years and currently reside together in a residence located at 25 Roohr Court, Chico, CA, 95928 (Residence), as more particularly described in Exhibit "A" hereto. The Residence was purchased during the marriage but is currently titled to Linda. Debtor did not claim an interest in the Residence in his bankruptcy case. None-the-less, Trustee claims the Residence is the joint property of Debtor and Linda. This Agreement resolves the claim of Trustee in and to the Residence.

**Agreement:**

3. Upon bankruptcy court approval of this Agreement, the Order approving the Agreement, shall adjudge the Residence to be Community Property of this estate.

4. The interest of Debtor and/or Linda in the Residence may be redeemed, and the estate's interest in the Residence fully satisfied by the payment of \$55,000 cash to the estate, within 30 days of the date any order approving this Agreement is entered on the Docket of the bankruptcy court.

**RELEASES**

5. **Release by Trustee:** Upon bankruptcy court approval of this Agreement, and the actual receipt of \$55,000 by the estate, Trustee and the Estate, and each of them, hereby release Debtor, Linda, and the Residence, their employees, attorneys, successors and assigns from any and all claims, demands, obligations, damages, liabilities and causes of action, of any nature whatsoever, known or unknown, suspected or unsuspected, whether based on contract, tort, statute, claim in bankruptcy, or other legal or equitable theory of recovery. Upon the actual receipt of \$55,000 by the estate, Trustee agrees to execute any and all documents reasonable requested by Debtor or Linda as may be necessary to give full and complete effect to this Release.

6. **Release by Debtor and Linda:** Upon bankruptcy court approval of this Agreement, and the actual payment of \$55,000 to the estate, Michael Metzger, Linda Metzger, and each of them, hereby releases John Reger, Trustee, and the Estate and its employees, attorneys, successors and assigns from any and all claims, demands, obligations,

1 damages, liabilities and causes of action, of any nature whatsoever, known  
 2 or unknown, suspected or unsuspected, whether based on contract, tort,  
 3 statute, claim in bankruptcy, or other legal or equitable theory of recovery.

4 7. **Waiver of California Civil Code Section 1542:** The Parties to this  
 5 agreement, and each of them, with respect to the claims released in this  
 6 Agreement, expressly waive any rights or benefits available to them under  
 7 the provisions of section 1542 of the California Civil Code, or any similar  
 8 statute, which provides as follows:

9 "A general release does not extend to claims which  
 10 the creditor does not know or suspect to exist in his  
 11 favor at the time of executing the release, which if  
 12 known by him must have materially affected his  
 13 settlement with the debtor."

14 8. Each party acknowledges that its attorney at law has explained to  
 15 him the meaning and effect of this statute. The Parties fully understand  
 16 the statutory language of California Civil Code section 1542 and, with this  
 17 understanding, they nevertheless assume all risk for claims released under  
 18 this Agreement, known or unknown, and they specifically waive any rights  
 19 they may have under California Civil Code section 1542. The Parties fully  
 20 understand that if the facts with respect to which this Agreement is  
 21 executed and the dismissal herein provided for is made, are found hereafter  
 22 to be other than or different from the facts now believed by them to be true,  
 23 they expressly accept and assume the risk of such possible difference in  
 24 facts and agree that this Agreement shall be and remain effective  
 25 notwithstanding such difference in facts.

#### 26 **Miscellaneous**

27 9. **No Admission of Liability:** The Parties' consent to this Agreement is  
 28 given in recognition of the risk of further litigation and in order to prevent

1 the expense of further litigation, and does not constitute an admission of  
2 liability or any admission that any of the facts asserted by any party  
3 hereto are true or that the claim or any portion thereof asserted by any  
4 party hereto is well founded. Nothing contained herein shall be construed as  
5 an admission by any of the Parties of any liability of any kind, all such  
6 liability being expressly denied.

7 10. Bankruptcy Court Approval: This Agreement is subject to the  
8 approval of the Bankruptcy Court in the Bankruptcy Case. Approval of  
9 the Bankruptcy Court of all of the terms of this Agreement is a condition  
10 precedent to the binding and legal effect of this Agreement. Each party  
11 shall support any motion brought to obtain the approval of the Bankruptcy  
12 Court. If for any reason the Bankruptcy Court does not approve this  
13 Agreement, in that event nothing contained herein, or in any motion  
14 brought to obtain the approval of the Bankruptcy Court of this Agreement,  
15 may be used by any party as an admission against the other in any  
16 subsequent litigation, action, or proceeding.

17 11. Advice of Counsel: The Parties, and each of them, represent and  
18 acknowledge that each of them has separately engaged and been advised  
19 by legal counsel with respect to this Agreement and the related  
20 instruments, documents and agreements and all matters covered by or  
21 related to this Agreement. Each party states that the entire contents of  
22 this Agreement have been explained to it or them by their duly authorized  
23 attorney at law and that this Agreement is executed voluntarily and with  
24 full knowledge of its significance.

25 12. Approval of Agreement: Upon the completion of this Agreement,  
26 Trustee will promptly seek approval of this Agreement in its entirety in the  
27 Bankruptcy Case. Each party hereto will undertake their respective best

1 efforts to support the motion of Trustee to approve the compromise  
2 reflected in this Agreement in its entirety.

3 13. Further Assurances: The Parties agree now and in the future  
4 execute, acknowledge and deliver any and all such further reasonable  
5 instruments, documents and agreements as may be necessary, expedient,  
6 or proper, in order to complete any and all transactions contemplated by  
7 this Agreement, and to do any and all other acts and to execute,  
8 acknowledge and deliver any and all documents as so requested in order to  
9 carry out the intent and purpose of this Agreement.

10 14. Agreement Authorized: This Agreement and each of the other  
11 agreements, instruments or documents contemplated hereby have been  
12 duly authorized, executed and delivered by each of them and/or the other  
13 persons and entities thereto, if any; the execution, delivery and performance  
14 obligation(s) of this Agreement and each of such other agreements,  
15 instruments or documents from each of them and/or other persons or  
16 entities do not require the consent or approval of any governmental body or  
17 regulatory authority, except the Bankruptcy Court in the Bankruptcy  
18 Case and are not in contravention of or conflict with any law or regulation  
19 or any term or provision of articles of incorporation, by-laws, trust  
20 agreements or partnership agreements; and this Agreement and each of  
21 the other agreements, instruments or documents contemplated hereby are  
22 the valid and binding obligations of each of them and/or the other persons or  
23 entities, enforceable in accordance with their respective terms.

24 15. Integration clause: This Agreement supersedes all prior  
25 negotiations, communications, understandings, discussions and  
26 commitments relating to this Agreement, whether written or oral or  
27 whether between or among the Parties or their respective counsel and  
28

1 constitutes the entire agreement of the Parties. This Agreement and any  
2 document and instrument executed in connection with this Agreement  
3 constitutes the "arms length" negotiations of all the parties hereto and the  
4 enforcement shall be interpreted in a neutral manner, and not more  
5 strongly for or against any party based upon the source of the  
6 draftsmanship hereof. This Agreement and the related instruments,  
7 documents, agreements and transactions shall not be construed against  
8 either party merely because of their involvement in the preparation.  
9 References to the plural in this Agreement shall include the singular, and  
10 vice versa, unless the context otherwise requires.

11 16. Modification: This Agreement may be modified or amended only by  
12 written instrument. No amendment or other modification, rescission,  
13 release or assignment of any part of this Agreement shall be effective  
14 except pursuant to a written agreement subscribed to by parties hereto or  
15 their duly authorized representatives.

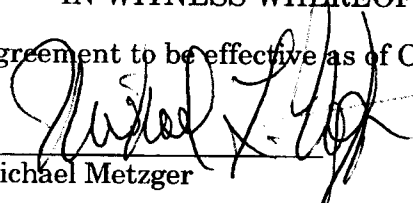
16 35. Attorney Fees: If any party to this Agreement is required to take  
17 any legal or equitable action including, without limitation, an action for  
18 declaratory relief, specific performance or other proceeding to enforce,  
19 construe or defend any provision contained in this Agreement or relating to  
20 this Agreement, the prevailing party shall be entitled to the reimbursement  
21 of reasonable attorney fees.

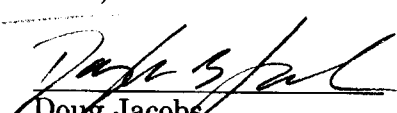
22 17. Counterparts: This Agreement may be executed by each of the  
23 Parties in separate counterparts, each of which when so executed will be an  
24 original, but all such counterparts will together constitute but one and the  
25 same instrument.

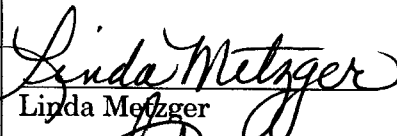
26 18. No Representations: The Parties, and each of them, acknowledge  
27 and agree that they have relied on their own information and completed

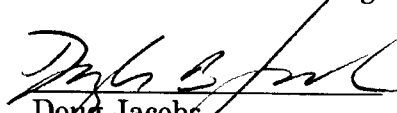
1 investigation as to all matters agreed, represented, warranted or  
2 acknowledged herein and they have no desire for further information and for  
3 further investigation.

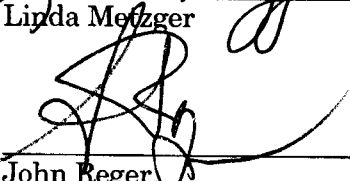
4  
5 IN WITNESS WHEREOF, the Parties have executed this  
6 Agreement to be effective as of October 25, 2006.

7  
8   
Michael Metzger

9   
Doug Jacobs  
Counsel to Michael Metzger

10   
Linda Metzger

11   
Doug Jacobs  
Counsel to Linda Metzger

12  
13   
John Reger,  
Trustee

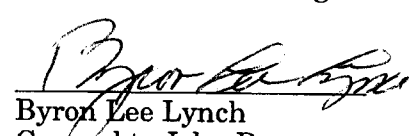
14   
Byron Lee Lynch  
Counsel to John Reger,  
Trustee

Exhibit "A"

A PARCEL OF LAND LOCATED IN THE STATE OF CA, COUNTY OF BUTTE, WITH A SITUS ADDRESS OF 25 ROOHR CT, CHICO CA 95928-9446 R014 CURRENTLY OWNED BY METZGER LINDA & HAVING A TAX ASSESSOR NUMBER OF 002-620-048-000 AND BEING THE SAME PROPERTY MORE FULLY DESCRIBED AS LOT 47 SHASTAN HOMES AND DESCRIBED IN DOCUMENT NUMBER 38430 DATED 06/27/2005 AND RECORDED 07/01/2005.